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TRIAL REPORT
SUMMARY/TESTIMONY/PROJECTION

CASE NAME: Cipollone DATE: 03-May-88 p.m. 

SUMMARY:

Walters' cross this afternoon focused on Gould's classification system and his specific diagnosis of ATC. After the jury was excused for the day, Sarokin reviewed a list of "housekeeping items" with counsel.

WITNESS: Dr. Victor E. Gould

IDENTITY: Defendants' Specific Causation Expert

EXAMINER: CROSS: Cynthia Walters TIME: 2 hrs. 15 min.

TESTIMONY:

Walters's questions on Gould's classification system attempted to show that it is overly broad, and that other pathologists would classify Gould's ATC as small cell.

With respect to Gould's specific diagnosis of ATC, Walters spent the entire afternoon trying to suggest that the very characteristics Gould relied for his ATC diagnosis also support a diagnosis of small cell. She began by concentrating on the "carcinoid syndrome" which consists of flushing, diarrhea and elevated serotonin levels. Walters reviewed three older articles which observed the symptoms in patients who had been diagnosed as having small cell. Gould repeatedly explained that the articles were so out-of-date and there had been such an evolution in the area of tumor classification over the past several years that he was not sure the authors themselves would even agree today that the tumor they originally called small cell should be so classified today. Gould even suggested that he would reconsider diagnoses reported in a 1960 article "even if I wrote it. Our concepts of these tumors have changed and changed considerably over the years." Walters tried to have Gould accuse the physicians publishing these articles of "misdiagnosing" the tumors and tried to suggest that Gould would consider them all to be ATC but he refused to agree.

Walters also attacked Gould's opinion that ATCs are peripherally located and tried to confront Gould with a text that

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suggested many ATCs are centrally located, while small cell carcinomas appear peripherally. Gould agreed that some small cell cancers may be peripheral, but the majority are centrally located and, despite the fact that his early research suggested ATCs were centrally located, he reaffirmed his current view that the majority of ATCs are peripherally located. Walters again argued that Rose's tumor was white and the defense's earlier experts had suggested that ATCs were yellow. Gould pointed out that Rose's tumor appeared to be "off-white" in the photograph.

With respect to survival time, Walters focused her questioning on the size and shape of Rose's initial tumor in 1981. Although it was difficult to follow, Walters' apparent theory was that "well circumscribed" tumor of the small cell type is an indication that the tumor has been detected at an early stage and this will result in a much longer survival rate. She attempted to confront Gould with an authoritative work standing for this proposition but Gould became very frustrated because it was an article by a thoracic surgeon, rather than a pathologist, and it was talking about radiological than microscopic evaluation of tumors. However, Gould did agree with the general proposition that a stage 1 tumor will result in a better survival rate.

Walters also tried to have Gould disagree with Sommers' opinion that there were neurosecretory granules in Rose's tumor but Gould simply suggested that this was something that anyone could miss.

Walters had Gould explain that he had collected 28 ATCs in his studies but he has published 40 articles on this subject. She asked if Gould was aware that Mills had collected 47 ATCs but had only published 3 articles. Gould deftly pointed out that, although the number of tumors in his collection may be small, "we have studied them extensively." Walters also had Gould acknowledge that preparing an article for a medical journal could take between 2 months and a couple of years. She then noted that Gould had published 10 articles in 1987 and 9 articles in 1986. Walters commented "That doesn't leave very much time for serious diagnostic work, does it doctor?"

"HOUSEKEEPING:"

The parties will submit jury instructions next Monday. Sarokin asked the parties to consider whether the jurors should be allowed to take their multiple jury binders into their deliberations and, if so, some method of removing unadmitted documents from the binders would have to be developed. Sarokin expressed that at the current time the alternate jurors would be chosen by random drawing and he asked the parties to consider how long the alternate jurors should be held after the initial jury begins to deliberate. He also asked counsel to consider whether the jury should be sequestered in light of the publicity surrounding this case.

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Sarokin also indicated that he would deal with the documents that had been redacted based on attorney-client ground but he was going to refer Edell's request to have access to the attorney-client portions of Mold's diaries to Magistrate Hedges. Hedges will also handle Edell's motion to compel defendants' request for admissions. Sarokin asked defense counsel for their best estimate of when the case would conclude since he has a criminal trial that is waiting to begin. Finally, Sarokin asked for an indication of how much time counsel wanted in closing and indicated that he generally does not place any restrictions on counsel's argument.

ASSESSMENT:

Walters' cross was extremely difficult even for attorneys in the audience to follow. The jury seemed extremely bored and distracted throughout much of her examination.

Sarokin has been receptive to Edell's suggestion that defense witnesses are being evasive and Edell raised this objection with Gould's testimony. After a sidebar discussion of this issue, Sirridge insisted that Gould had already answered Walters' question and Sarokin said "I don't think so. He gave a long answer but he hasn't yet said whether he agrees with the statement." Gould is visibly perplexed by Walters' questions because of their form and this may contribute to the suggestion that he is trying to evade when, in fact, he is trying to explain his answer in light of the poorly formed question.

The jury seemed very animated when sidebars were called this afternoon. When one sidebar was called, one juror was seen actually applauding as she turned to talk to a neighboring juror. This is in some contrast to several weeks ago when the jury whispered to each other and covered their mouths as they talked during sidebars.

PROJECTION:

Walters indicated she had approximately 10 additional minutes of cross for Gould. Sirridge has not yet determined whether he will have any redirect. Kensler will be the next witness. A final decision has not yet been made as to whether Bryant (Liggett) will testify. The next witness would then be Dr. Spears, Lorillard's research director.

Monday, May 9 -- Judge Sarokin's motion day -- no Cipollone trial. No report will be transmitted.

Friday, May 13 -- Court will not be in session; reason unknown. No report will be transmitted.

Monday, May 16 -- Court will not be in session; reason unknown. No report will be transmitted.

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Monday, May 23 -- Judge Sarokin's motion day -- no Cipollone trial. No report will be transmitted.

Monday, May 30 -- Court holiday -- Memorial Day. No report will be transmitted.

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